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ATTORNEY-CLIENT COMMUNICATION

September 4, 2009

R E C E I V E D
SEP 08 2009

CITY COUNCIL
RESEARCH AND ANALYSIS DIVISION

Detroit City Council
1340 Coleman A. Young
Municipal Center
Detroit, Michigan

- Re: 1) Whether the Initiatory Petition to Amend Sections 3-106, 3-107, and 4-103 of the 1997 Detroit City Charter to Change the Current At-Large Voting System for City Council to a System of Electing Council Members By Districts Amounts to a Charter Revision Which Can Only Be Effectuated By a Charter Revision Commission;**
- 2) In the Event That the Proposal Is Deemed to Be an Amendment and Not a Revision, Whether the Proposal, Which Was Returned by the Michigan Attorney General as Unapproved, Is Precluded from Being Placed on the November 3, 2009 Regular City General Election Ballot as the Statutory Deadline for Doing So Has Passed; and**
- 3) In the Event That the Proposal Is Deemed to Be an Amendment, Whether the Proposal Is in Contravention of the Requirements of Section 27a of the Michigan Home Rule City Act, MCL 117.27a, Which Mandates That City Council Create Districts and Their Boundaries for the Election of Council Members by Districts.**

Honorable City Council:

On August 31, 2009, Your Honorable Body, through Council President Kenneth V. Cockrel, Jr., requested a legal opinion as to whether an initiatory petition to amend Sections 3-106, 3-107, and 4-103 of the 1997 Detroit City Charter to change the current at-large voting system for the Detroit City Council to a system of electing Council Members by district amounts to a charter revision which can only be effectuated by a Charter Revision Commission. We have rephrased the question to be: 1) whether the initiatory petition to amend Sections 3-106, 3-107, and 4-103 of the 1997 Detroit City Charter to change the current at-large voting system for City Council to a system of electing Council Members by districts amounts to a Charter revision which can only be effectuated by a Charter Revision Commission; 2) in the event that the proposal is deemed to be an amendment and not a revision, whether the proposal, which was returned by the Michigan Attorney General as unapproved, is precluded from being placed on the November 3, 2009 Regular City General Election Ballot as the statutory deadline for doing so has passed; and 3) in the event that the proposal is deemed to be an amendment whether the proposal is in contravention of the requirements of Section



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27a of the Michigan Home Rule City Act, MCL 117.27a, which mandates that City Council create districts and their boundaries for the election of Council Members by districts. We are now responding to the request.

BACKGROUND

During April 2008, three separate ballot proposals were submitted to the Detroit Election Commission for approval of language of initiatory petitions for proposed amendments to the 1997 Detroit City Charter for the November 4, 2008 General Election. The subject matter of all three proposed petitions was the conversion of the current at-large voting system for the election of City Council Members to one that would elect Council Members by district.

At the May 5, 2008 Election Commission Meeting, the three groups were advised that Michigan Election Law does not authorize the Commission to review proposed petition language and, therefore, the groups would have to retain legal counsel. At the meeting, the three groups indicated that they would consolidate their efforts and submit petition language proffered by Mildred R. Madison, President of League of Women Voters of Detroit, to convert the current at-large voting system to one where seven (7) members are elected by district while two (2) are elected at large.

On August 5, 2009, 'Detroitters for City Council By Districts' filed "Initiative Petition to Amend Detroit City Charter" with the Office of the City Clerk. Subsequently, in accordance with Section 25 of the Michigan Home Rule City Act, MCL 117.25, the Department of Elections determined that there were 30,375 valid signatures out of 38,375 filed signatures, which meant that, as required by the statute, more than the five percent (5%) of the qualified and registered electors in the City of Detroit had signed the petitions.¹ (See Attachment #1.)

On August 19, 2009, Detroit City Clerk Janice M. Winfrey, as Detroit City Clerk and Chairperson of the Election Commission, sent the proposed petition to the Governor and Michigan Attorney General for review in accordance with Sections 22 and 21 of the Michigan Home Rule City Act, respectively, being MCL 117.22 and MCL 117.21, before placement of the proposal on the November 3, 2009 Regular City General Election Ballot.² (See Attachment #2.) On August, 24, 2009, the Michigan Attorney General's Office returned the proposed Charter amendment to the City Clerk as unapproved. The Attorney General stated:

¹There are 575,867 registered voters in the City of Detroit, which required that at least 28,793 valid signatures be submitted.

² It has been the long-standing practice of the City of Detroit that the Corporation Counsel send all proposed Charter amendments to the Governor and to the Attorney General.

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The Attorney General has a separate responsibility to review the proposed ballot language for compliance with the requirements of Section 21 of the HRCA which mandate that the ballot language be limited to 100 words and accurately and impartially describe the proposed amendment. As set forth in the initiative petition, the ballot language is incomplete, because the ballot language does not conclude with a question seeking voter approval of the proposed amendment. MCL 168.643a states that the question should be framed so that a "yes" vote will be a vote in favor of the proposal and a "no" vote will be a vote against the proposal.

A second problem with the proposed ballot language is the statement that the Detroit Election Commission will be required to establish the boundaries of the City's seven council districts within 90 days "after certification of the proposal." A review of the text of the proposed amendment discloses no such 90 day deadline. Accordingly, it must be concluded that this statement does not accurately describe the proposed amendment. In addition, the earliest date on which this amendment could take effect if approved by the City voters would be at the beginning of the City's next fiscal year after that election, since the amendment will require city funds to pay for the work of the City Election Commission and its staff in drawing up these seven council districts. Section 25(5) of the HRCA.

When an initiative petition is lacking ballot language, Section 21(2) of the HRCA states that the City Council shall provide the ballot language for the proposed amendment. (See Attachment #3.)

In accordance with Section 3-102 of the 1997 Detroit City Charter, the Election Commission held a meeting on August 25, 2009 to take action, among other things, regarding the proposed Charter amendment. At the meeting, the Department of Elections first provided a copy of the "Initiative Petition to Amend Detroit City Charter," which was filed on August 5, 2009, to Commissioners Kenneth V. Cockrel, Jr., and Krystal A. Crittendon and to Tonja R. Long, Legal Counsel for the Election Commission. At the meeting, the Commission voted 2-1³ to refer the proposed Charter amendment to the City Council to provide ballot language for the proposed amendment as suggested by the Office of the Michigan Attorney General in its letter dated August 24, 2009.

³City Clerk Janice M. Winfrey, Jr., and City Council President Kenneth V. Cockrel, Jr., voted "yes" and Corporation Counsel Krystal A. Crittendon voted "no."

LAW AND ANALYSIS

- I. THE PROPOSED AMENDMENTS ARE PROPER SUBJECTS OF CHARTER REVISION, NOT AMENDMENT, BECAUSE THEY RISE TO THE LEVEL OF A CHANGE IN THE FORM OF GOVERNMENT, AND ARE NOT SIMPLY A CORRECTION TO BETTER ACCOMPLISH THE PURPOSE OF THE CHARTER.**
- a) After Hearings and Deliberations, the Charter Revision Commission for the 1997 Detroit City Charter Submitted the Question of Election of City Council Members By District to the Detroit Electorate as Part of the Revision Process.**

The specific question of whether the People of the City of Detroit should elect the Members of the City Council either at large or by districts was a subject of the Charter Revision Commission for the 1997 Detroit City Charter. After consideration and as part of the revision process, the drafters of the 1997 Detroit City Charter submitted the following question to the People of the City of Detroit at the November 5, 1996 General Election:

Proposal C - Proposal to Adopt a New City Charter.

Shall the City of Detroit Home Rule Charter proposed by the Detroit Charter Revision Commission, together with voter preference on Proposal D be adopted?

Yes _____

No _____

Proposal D - Manner of Electing Members of the City Council.

Vote for only one (1) option, either 1, or 2.

If the City of Detroit Home Rule Charter is adopted, shall it provide for:

OPTION 1: A total of nine (9) members of city council with all members elected at large?

OPTION 2: A total of eleven (11) members of city council with one (1) council member elected from each of nine (9) districts, and two (2) members elected at large, the president and president *pro tempore*?

On November 5, 1996, the People of the City of Detroit adopted the 1997 Detroit City Charter. In addition, the voters approved Option 1 over Option 2 by a vote of 51,857 to 40,040. This vote resulted in adoption of the current Sections 2-101, 3-101, 3-105, 3-106, 3-107, 4-103, and 4-119 of the 1997 Detroit City Charter.



The proposed ballot question would amend Sections 3-106 of the 1997 Detroit City Charter, *Geographical Basis for Electing Council Members*, Section 3-107 of the 1997 Detroit City Charter, *Nominating Petitions*, and 4-103 of the 1997 Detroit City Charter, *Selection of Council President*. However, there are at least six (6) other sections of the 1997 Detroit City Charter which would be affected by adoption of this ballot proposal, but were not included in the petition.

b) The Proposed Charter Amendment Affects at Least Six (6) Other Sections of the 1997 Detroit City Charter.

Although 'Detroitiers for City Council By Districts' have stylized this questions as a charter amendment, it is apparent from a review of the 1997 Detroit City Charter that approval of the question by the voters would not continue the general plan and purport of the 1997 Detroit City Charter, with corrections of detail to better accomplish its purpose. *Kelly v Laing*, 259 Mich 212, 217; 242 NW 891 (1932). Instead, adoption of the proposed amendment would impact many sections of the Charter thereby suggesting fundamental change necessitating revision. *Id.*

First, Section 2-101⁴ of the 1997 Detroit City Charter, *Qualifications for Elective and Appointive Officers*, would be affected. This section provides, in part, that a person must be a resident of the City of Detroit and a qualified and registered voter in the City of Detroit. In the event that the proposed question is placed on the ballot, is passed and were to take effect, the Charter would not require that a candidate for City Council who is running from a district be a qualified and registered voter from the district where he or she seeks office.

Second, Section 3-101⁵ of the 1997 Detroit City Charter, *City Elections*, would be affected.

⁴ Sec. 2-101 of the 1997 Detroit City Charter provides:

A person must be a citizen of the United States, a resident and a qualified and registered voter of Detroit, at the time of filing for, and while holding, any elective city office.

A person must be a citizen of the United States, a resident and a qualified and registered voter of Detroit, at the time of assuming the duties of, and while holding, any appointive city office. However, this requirement does not preclude an appointive officer who is assigned to a work location outside the city from using a residence outside of the city.

⁵ Section 3-101 of the 1997 Detroit City Charter provides:

A regular city general election to fill the elective offices of the city shall be held on the Tuesday after the first (1st) Monday of November of 1997 and every fourth (4th) year thereafter.

A regular city primary election to nominate candidates for city offices shall be held on the Tuesday after the second (2nd) Monday of September before the general election.



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This section provides for the filling of a vacancy on the City Council by special election unless the vacancy occurs after March 1st in the year in which City elections are held. In the event that the proposed question is placed on the ballot, is passed and were to take effect and there is a vacancy in a district after March 1st in the year in which City elections are held, there would be no mechanism for filling the vacancy. This would result in the residents of a district being without City Council representation for up to nine (9) months.

Third, Section 4-102⁶ of the 1997 Detroit City Charter, *Meetings*, would be affected. This section requires that the City Council hold at least eight (8) meetings throughout the City. Generally, these are evening meetings. In the event that the proposed question is placed on the ballot, is passed and were to take effect, thereby resulting in seven (7) districts, there would be an uneven allocation of meetings unless fourteen (14) evening meetings were held each calendar year.

If a vacancy occurs in the office of mayor or city council thirty (30) days or more before the filing deadline for a general election in the city or special citywide election, the vacancy shall be filled at that election for the remainder of the unexpired term. When a vacancy occurs in the office of mayor or city council less than thirty (30) days before the filing deadline for a general election in the city or special citywide election, the city council shall order a special primary election for nomination of candidates and a special general election to fill the vacancy for the remainder of the unexpired term. The resolution ordering a special election shall be adopted at least eighty (80) days before the special primary election and at least one hundred twenty (120) days before the special general election. Nominating petitions shall be filed not later than the fourth (4th) Tuesday after adoption of the resolution ordering the special elections. Vacancies occurring on or after March 1st of the year in which city elections are held shall not be filled by a special election.

The city council may, by resolution adopted not less than seventy (70) days before any election or special election, submit any proposal to the voters of the city.

⁶Section 4-102 of the 1997 Detroit City charter provides:

The city council shall hold its first (1st) meeting in the first (1st) week of January after the regular city general election and, during ten (10) months of the year, shall meet every business day unless otherwise provided by resolution at such times and places as it may provide.

On at least eight (8) occasions during each calendar year, the city council shall hold meetings in areas of the city, to be determined by the city council. Those meetings shall begin between the hours of seven (7) o'clock P.M. and eight (8) o'clock P.M.

Special meetings may be held at the call of the mayor or four (4) or more city council members and, whenever practicable, upon no less than twenty-four (24) hours notice to each member and to the public.

All business which the city council may perform shall be conducted at a public meeting held in compliance with the opening meetings act, 1976 P.A.267, MCL 15.261 *et seq.*; MSA 4.1800 *et. seq.*



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Fourth, Section 4-113⁷ of the 1997 Detroit City Charter, *Prohibition on Interference in Administration*, would be affected. This section prohibits the interference in the Administration thereby requiring that Council Members deal with Executive Branch employees solely through the Mayor. In the event that the proposed question is placed on the ballot, is passed and were to take effect, the Council Members who are elected from districts would not have any authority to directly request that departments handle matters, such as street-light outage, clean-up from illegal dumping, or the like. In other words, the balance of power between the Mayor and the City Council would remain unchanged.

Fifth, Section 4-119⁸ of the 1997 Detroit City Charter, *Veto*, would be affected. This section delineates instances under the Charter where the Mayor is precluded from vetoing certain resolutions that are adopted by the City Council. Section 27a of the Michigan Home Rule City Act, MCL

⁷ Section 4-113 of the 1997 Detroit City Charter provides:

Except for purposes of inquiries and investigations, the city council or its members shall deal with city officers and employees who are subject to the direction and supervision of the mayor solely through the mayor, and neither the city council nor its members shall give orders to any such officer or employee, either publicly or privately.

⁸ Section 4-119 of the 1997 Detroit City Charter provides:

Every ordinance or resolution of the city council, except quasi-judicial acts of the city council including any under section 9-302, appointments by the city council or action taken under section 2-107(2-3), 4-102, 4-105, 4-108, 4-109, 4-120, 4-121, 7-1006, or 12-110 of this Charter, shall be presented by the city clerk to the mayor within four (4) business days after adjournment of the meeting at which the ordinance or resolution is adopted.

The mayor, within seven (7) days of receipt of an ordinance or resolution, shall return it to the city clerk with or without approval, or with a veto and a written statement explaining the veto. However, with respect to an emergency ordinance, the mayor shall notify the city clerk of a veto in any reasonable manner within twenty-four (24) hours after the mayor's office received written notice from the city clerk that the emergency ordinance has been adopted.

An ordinance approved by the mayor shall be deemed enacted thereupon. An ordinance returned to the city clerk neither approved nor vetoed by the mayor shall be deemed enacted upon receipt by the city clerk. The mayor shall return any resolution neither approved nor vetoed to the city clerk with a written statement explaining the reason the resolution was neither approved nor vetoed. An ordinance or resolution not returned to the city clerk within seven (7) days of receipt by the mayor shall be deemed enacted upon expiration of the seven (7) day period; however, with respect to an emergency ordinance, should the mayor fail to notify the city clerk of a veto within twenty-four (24) hours of receipt by the mayor's office of notice that the ordinance has been adopted, the ordinance shall be deemed enacted upon expiration of the twenty-four (24) hour period.

An ordinance or resolution vetoed by the mayor can be reconsidered by the city council only at a regular meeting within one (1) week after receipt of the mayor's veto. A two-thirds (2/3) majority of city council members serving may pass the ordinance or resolution over the mayor's veto.



117.27a, makes the City Council responsible for creating Council districts. In the event that the proposed question is placed on the ballot, is passed and were to take effect, the Mayor would be free to veto the district plan that is created by City Council.

Sixth, Section 11-103⁹ of the 1997 Detroit City Charter, *Principles Applicable in*

⁹ Sec. 11-103. Principles applicable in administering plans.

Not more than two (2) governing bodies for administering the city's retirement plans may be established.

1. The board of trustees of the general retirement system shall consist of:

A. The mayor;

B. A city council member selected by that body;

C. The city treasurer.

D. Five (5) members of the retirement system, to be elected by the members of the retirement system under rules and regulations as may be adopted by the board, except that not more than one (1) trustee shall be elected from any department;

E. A citizen of the city who is neither an employee of the city nor eligible to receive benefits under the retirement system, appointed by the mayor, subject to approval of the board.

F. One (1) retirant, receiving benefits under the retirement system and elected by retired city employees under procedures established by ordinance.

2. The board of trustees of the police and fire retirement system shall consist of:

A. The mayor or in the absence of the mayor, a designee;

B. A city council member selected by that body;

C. The city treasurer;

D. The chief of police;

E. The fire commissioner;

F. Three (3) firefighters who are members of the retirement system elected by the firefighter members under the rules and regulations as may be adopted by the board. Trustees shall be:

1. Two (2) to be elected by and from members holding the rank of lieutenant (or equivalent) and lower ranks;

2. One (1) to be elected by and from members holding a rank above lieutenant (or equivalent).

G. Three (3) police officers who are members of the retirement system elected by police officer members under the rules and regulations as may be adopted by the board. Trustees shall be:

1. Two (2) to be elected by and from members holding the rank of lieutenant (or equivalent and lower ranks;

2. One (1) to be elected by and from members holding a rank above lieutenant (or equivalent); and

H. A retirant, receiving benefits under the retirement system who shall be a resident of the city and elected by retired firefighters and police officers under procedures established by ordinance.

Staff services required by a governing body shall be provided as determined by the finance director.

Administering Plans, would be affected. This section provides that the City Council select one Council Member to be a Member of the Board of Trustees of the General Retirement System and one Council Member to be a Member of the Police and Fire Retirement System. In the event that the proposed question is placed on the ballot, is passed and were to take effect, unless the Council President and Council President *Pro Tem* were selected, the selection of any Council Member by district to be a Member of either Retirement System would leave residents of other district without representation.

A review of these six (6) section of the 1997 Detroit City Charter, in concert with the three (3) sections of the Charter that are proposed to be on the ballot, demonstrate that the proposed change is not a change in detail. Instead, if placed on the ballot, passed and were to take effect, the proposed ballot question would result in conflict with at least six (6) other section of the Charter.

c) Because the Proposed Ballot Question Would Result in a Fundamental Change in the Form of City Government, It Is in the Nature of a Revision.

Article 7, Section 22, of the 1963 Michigan Constitution provides that:

Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter . . .

The Michigan Home Rule City Act ("Act"), MCL 117.1 *et seq.*, provides two mechanisms for making changes to a home rule charter. The first is revision, as set forth in Section 18 of the Act, being MCL 117.18, which provides that a home rule city charter may be revised in one of two ways: 1) when its legislative body by a 3/5 vote of the members elect declare for a general revision of the charter, or 2) when an initiatory petition is presented as provided in Section 25 of the Act, being MCL 117.25.

The second is amendment by either action of the legislative body, or by initiative petition as found in Section 21 of the Act, being MCL 117.21. The authority of the electors to amend their city charter is provided for in Section 21 of the Act, being MCL 117.21, by the legislative body of a city on a 3/5 vote of the members-elect or by an initiatory petition as provided in Section 25 of the Act, being MCL 117.25.

The terms "revise" and "amend" are not interchangeable, and it has been repeatedly held that certain types of changes which might be the proper subject of revision would not be properly presented as amendment. The Michigan Supreme Court set out guiding principles in *Kelly v Laing*,



259 Mich 212, 217; 242 NW 891 (1932):

“Revision” and “amendment” have the common characteristics of working changes in the charter and are sometimes used inexactly, but there is an essential difference between them. Revision implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old. As applied to fundamental law, such as the constitution or charter, it suggests a convention to examine the whole subject and to prepare and submit a new instrument, whether the desired changes from the old be few or many. Amendment implies continuance of the general plan and purport of the law, with corrections to better accomplish its purpose. Basically, revision suggests fundamental change, while amendment is a correction of detail. (Emphasis added.)

The Court found that a change which works an alteration in the “form of government” to be a fundamental change requiring a revision. Among the changes that can be made by amendment are changes in the number of city commissioners, or in city contract procedures, and elimination of limitations on special assessments. *Id.* In the converse, a proposal to abolish the office of city manager and vest his powers and duties in the city commission, or a proposal to provide for the recall of the city manager, are both so fundamental as to require charter revision. *Midland v Arbury*, 38 Mich App 771; 197 NW2d 134 (1972).

The basis required for the “form of government” doctrine has at times involved far reaching changes. However, the Illinois Court of Appeals found in *Dunne v County of Cook*, 462 NE 2d 970; 123 Ill App 3d 468 (1984), aff’d 483 NE 2d 13; 108 Ill 2d 161 (1985), “. . . that a change in the form of government does not necessarily mean that the ‘basic nature of government’ has to be changed.” In Michigan, a relatively minor proposed charter amendment was held illegal on the “change in the form of government” theory when the proposed charter “amendment” involved a proposal to make the city manager subject to recall. *Midland, supra*. The Michigan Court of Appeals affirmed the trial court’s ruling that such a change would require a revision.

Ultimately, a charter is an organic document based upon underlying principles and written as a unitary scheme. In essence, a charter:

“ . . . creates the body politic and corporate, contains the municipal powers and gives a form of municipal organization . . . distributes the powers and duties of the various departments, boards and officers and provide the manner in which the several powers shall be exercised.”
2 McQuillan, Municipal Corporation Section 9.03 (1979).

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What a Charter is not and cannot be allowed to become is a patchwork of incongruous caprices lacking consistent unifying philosophy and approach. Attempts at piecemeal tampering with a charter based often upon personalities or the exigencies of the moment are destructive of the internal consistency and unifying philosophy of the Charter and have been rightly rejected by the authorities. See, OAG 1976, p 390; OAG 1976, p 259.

II. ASSUMING *ARGUENDO* THAT THE PROPOSAL IS A CHARTER AMENDMENT AND NOT A REVISION, THE PROPOSED AMENDMENT, WHICH WAS RETURNED BY THE MICHIGAN ATTORNEY GENERAL AS UNAPPROVED, MUST HAVE BEEN APPROVED AT LEAST SEVENTY (70) DAYS BEFORE THE ELECTION, OR BY AUGUST 25, 2009, AND, THEREFORE, CANNOT BE PLACED ON THE NOVEMBER 3, 2009 REGULAR CITY GENERAL ELECTION BALLOT AS THE STATUTORY DEADLINE FOR DOING SO HAS PASSED.

Section 21(1) of the Michigan Home Rule City Act, MCL 117.21(1), provides that amendment of a home rule city charter may be proposed by the legislative body of a city on a 3/5 vote of the members-elect or by an initiatory petition. In either case, Section 646a(2) of Michigan Election Law, being MCL 168.646a(2), provides, in pertinent part: "If a local. . . ballot question is to be voted on at a regular election date . . . the ballot wording of the ballot question shall be certified to the local or county clerk at least 70 days before the election." This provision, together with the pertinent parts of Section 21 of the Michigan Home Rule City Act, requires that a proposed Charter amendment be approved and certified to the City Clerk not less than seventy (70) days before the election. For the November 3, 2009 Regular City General Election, the statutory deadline for complying with MCL MCL 168.646a(2) was August 25, 2009.

As indicated above in Background, the Election Commission voted 2-1 to forward the language to Your Honorable Body to ameliorate the problems indicated by the Michigan Attorney General regarding the proposed ballot language. The Attorney General stated: "When an initiative petition is lacking ballot language, Section 21(2) of the [Home Rule City Act] states that the City Council shall provide the ballot language for the proposed amendment." In the event that Your Honorable Body deemed the proposed ballot question to be an amendment and provides language for the proposed amendment, the proposed language is required to be returned to the Michigan Attorney General for approval. In the event that the Attorney General approves the language, Your Honorable Body would have to schedule a Special City Election for February 23, 2010 and the Election Commission would have to place the question of the February 23, 2010 Special City Election Ballot by December 15, 2009, because the statutory deadline for the November 3, 2009 Regular City General Election was August 25, 2009.

III. ASSUMING *ARGUENDO* THAT THE PROPOSAL IS A CHARTER AMENDMENT AND NOT A REVISION, THE PROPOSAL IS IN CONTRAVENTION OF THE REQUIREMENTS OF SECTION 27a OF THE MICHIGAN HOME RULE CITY ACT, MCL 117.27a, WHICH MANDATES THAT CITY COUNCIL CREATE DISTRICTS AND THEIR BOUNDARIES FOR THE ELECTION OF COUNCIL MEMBERS BY DISTRICTS.

The petition, which contains a proposed amendment to Section 3-106 of the 1997 Detroit City Charter states:

Sec. 3-106. Geographical basis for electing council members.

There shall be ~~one (1) council district~~ SEVEN (7) DISTRICTS AND ONE (1) AT LARGE DISTRICT established in the city and ~~all members~~ ONE (1) MEMBER SHALL BE ELECTED FROM EACH COUNCIL DISTRICT AND TWO (2) MEMBERS SHALL BE ELECTED AT LARGE. ~~of the city council are elected from the one (1) council district at large.~~

THE ELECTION COMMISSION SHALL REVISE THE BOUNDARIES OF THE DISTRICTS WITHIN SIXTY (60) DAYS AFTER THE FIGURES FROM THE FEDERAL DECENNIAL CENSUS BECOMES AVAILABLE. NEW DISTRICT BOUNDARIES CREATED WITHIN ONE HUNDRED TWENTY (120) DAYS OF A CITY PRIMARY ELECTION SHALL BECOME EFFECTIVE AFTER THE GENERAL ELECTION.

THE ELECTION COMMISSION SHALL, TO THE GREATEST EXTENT POSSIBLE, ESTABLISH WARDS THAT ARE COMPACT, CONTIGUOUS AND OF EQUAL POPULATION.
(See Attachment #1)

Section 27a of the Michigan Home Rule City Act, MCL 117.27a, provides:

Apportionment of wards; definitions.

- (1) For the purposes of this section:
 - (a) "Local legislative body" means the council, common council or commission of a city.



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(b) "Ward" means a district comprising less than all of the area of a city which constitutes the political unit from which 1 or more members of the local legislative body is nominated, elected or nominated and elected.

(2) The population of each city subject to the provisions of this section shall, in the first instance, be determined from the most recent official United States decennial census. Other governmental census figures of total city population may be used if taken subsequent to the latest decennial United States census and the last decennial United States census figures are inadequate for the purposes of this section. Each city shall have the power to conduct its own census for this purpose.

(3) This section shall be applicable to all cities that do not elect all the members of their local legislative body at large. This section shall not repeal any charter provisions meeting the standards established herein but shall be applicable to all charters that fail in whole or in part, to meet the standards herein, or the constitutional requirements of this state or United States constitution.

(4) In each such city subject to the provisions of this section the local legislative body, not later than December 1, 1967, shall apportion the wards of the city in accord with this section. In subsequent years, the local legislative body, prior to the next general municipal election occurring not earlier than 4 months following the date of the official release of the census figures of each United States decennial census, shall apportion the wards of the city in accord with this section.

(5) The local legislative body shall file the apportionment plan with the city clerk and make copies available at cost to any registered voter of the city. Such plan shall provide for wards which are as nearly of equal population as is practicable and contiguous and compact. Residents of state institutions who cannot by law register in the city as electors shall be excluded from population computations where the number of such persons is identifiable in the census figures available.

(6) Any registered voter of the city within 30 days after the filing of the apportionment plan for his city, or within 30 days after such apportionment plan shall be submitted, may petition the circuit court to determine if the plan meets the requirements of the laws and constitution of this state and the United States. (Emphasis added.)



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The petition language of the proposed amendment to Section 3-106 of the 1997 Detroit City Charter is in contravention with Section 27a of the Michigan Home Rule City Act, being MCL 117.27a. In particular, the petition language illegally mandates that the Election Commission, in lieu of the City Council, create districts and their boundaries for electing candidates who are seeking office as a Council Member representing a district. In addition, the petition language illegally mandates a procedure for creating districts which is different than the statutory procedure proscribed by the Michigan Legislature in MCL 117.27a.

As indicated above, the Attorney General stated: "When an initiative petition is lacking ballot language, Section 21(2) of the [Home Rule City Act] states that the City Council shall provide the ballot language for the proposed amendment." However, in this instance, Your Honorable Body would not be able to change illegal petition language to provide ballot language for the proposal.

CONCLUSION

For the above reasons, it is the opinion of the Law Department that, because the proposed initiatory petition to convert the current at-large voting system utilized for the election of City Council Members to one utilizing election of Council Members by districts constitutes a fundamental change in the structure of City government, which may only be accomplished by revision, and not amendment, such a proposal may not be presented to amend the 1997 Detroit City Charter. A proposal to amend sections 3-106, 3-107 and 4-103, by initiatory petition, may only be accomplished by a charter revision in accordance with Section 18 of the Michigan Home Rule City Act, being MCL 117.18.

Further, it is our opinion that, even if the question is in the nature of an amendment and not a revision, the proposal, which was returned by the Michigan Attorney General as unapproved, must have been approved at least seventy (70) days before the election, or by August 25, 2009. Therefore, the question cannot be placed on the November 3, 2009 Regular City General Election Ballot as the statutory time for doing so has passed.

In addition, it is our opinion that, even if the question is in the nature of an amendment and not a revision, the proposal is in contravention to the requirements of Section 27a of the Michigan Home Rule City Act, being MCL 117.27a, which mandates that City Council create districts and their boundaries for the election of Council Members by districts. Because the petition language is illegal, Your Honorable Body would not be able to provide ballot language for the proposal.

Based upon the legal authorities in this opinion, the proposed question cannot be placed on the ballot. In the event that Your Honorable Body does not follow our legal advice, the proposed question cannot appear on the ballot until the City Council adopts a resolution for a Special City Election to be held on February 23, 2010.



Detroit City Council
September 4, 2009
Page 15

CONFIDENTIAL AND PRIVILEGED
ATTORNEY-CLIENT COMMUNICATION

If you have any questions regarding this matter, please let us know.

Respectfully submitted,

Dennis A. Mazurek, Chief
Assistant Corporation Counsel

Approved:

Edward V. Keelean
Deputy Corporation Counsel

City of Detroit
OFFICE OF THE CITY CLERK

Jonice M. Wintrey
City Clerk

Vivian A. Hudson
Deputy City Clerk

RECEIPT FOR PETITIONS

This is to acknowledge receipt of 2,559
petitions filed for Council by Districts:

from the City Clerk's Office.

38,375
(38,099 cre)

The **approximate** number of signatures submitted by the filer 38,000 Plus

Filed by:

Detroiters For City Council By Districts

Address:

8120 East Jefferson Ave zip: 48214

Suite 205 1420 Washington Blvd - Det 48226

Telephone:

(313) 962-0905

Processing Clerk

Date

Original—Candidate 2 Copies—Elections & City Clerk

INITIATIVE PETITION TO AMEND THE DETROIT CITY CHARTER

We, the undersigned qualified and registered electors, residents in the City of Detroit, in the County of Wayne, State of Michigan respectively petition for Amendments to Sections 3-106, 3-107 and 4-103 of the City Charter to provide for the nomination and election of one City Council Member from each of seven separate districts and 2 members at-large.

The proposal is to be voted on at the next scheduled or special election held in the City of Detroit.

THE FULL TEXT OF THE PROPOSED AMENDMENTS APPEARS ON THE REVERSE SIDE OF THIS PETITION.

WARNING - A PERSON WHO KNOWINGLY SIGNS THIS PETITION MORE THAN ONCE, SIGNS A NAME OTHER THAN HIS OR HER OWN, SIGNS WHEN NOT A QUALIFIED AND REGISTERED ELECTOR, OR SETS OPPOSITE HIS OR HER SIGNATURE ON A PETITION, A DATE OTHER THAN THE ACTUAL DATE THE SIGNATURE WAS AFFIXED, IS VIOLATING THE PROVISIONS OF THE MICHIGAN ELECTION LAW.

SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
				MONTH	DAY	YEAR
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is qualified to circulate this petition and that each signature on the petition was signed in his or her presence, and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a qualified registered elector of the City, Township or Village listed in the heading of the petition, and the elector was qualified to sign the petition.

WARNING - A CIRCULATOR KNOWINGLY MAKING A FALSE STATEMENT IN THE ABOVE CERTIFICATE, A PERSON NOT A CIRCULATOR WHO SIGNS A CIRCULATOR, OR A PERSON WHO SIGNS A NAME OTHER THAN HIS OR HER OWN AS CIRCULATOR IS GUILTY OF A MISDEMEANOR.

CIRCULATOR - DO NOT SIGN
CERTIFICATE UNTIL AFTER CIRCULATION

Signature of Circulator

Printed Name of Circulator

City, Township or Village where qualified to be registered

Complete Residence Address (Show the number of Rural Route)

Zip Code

A proposal to amend Section 3-106, 2-107 and 4-103 of the Detroit City Charter: (new proposed language in CAPITAL LETTERS and proposed deletions shown by strike through).

Sec 3-106. Geographical basis for electing council members.

There shall be ~~one (1) council district~~ SEVEN (7) COUNCIL DISTRICTS AND ONE (1) AT LARGE DISTRICT established in the city and ~~all members~~. ONE (1) MEMBER SHALL BE ELECTED FROM EACH COUNCIL DISTRICT AND TWO (2) MEMBERS SHALL BE ELECTED AT LARGE. ~~of the city council are elected from the one (1) council district at large.~~

THE ELECTION COMMISSION SHALL REVISE THE BOUNDARIES OF THE DISTRICTS WITHIN SIXTY (60) DAYS AFTER THE FIGURES FROM THE FEDERAL DECENNIAL CENSUS BECOMES AVAILABLE. NEW DISTRICT BOUNDARIES CREATED WITHIN ONE HUNDRED TWENTY (120) DAYS OF A CITY PRIMARY ELECTION SHALL BECOME EFFECTIVE AFTER THE GENERAL ELECTION.

THE ELECTION COMMISSION SHALL, TO THE GREATEST EXTENT POSSIBLE, ESTABLISH WARDS THAT ARE COMPACT, CONTIGUOUS AND OF EQUAL POPULATION.

Sec 3-107. Nominating petitions.

A candidate for nomination to an elective city office shall file with the city clerk a non-partisan nominating petition consisting of one (1) or more petition forms.

The candidate's petition shall be signed by a number of voters of the city equal to not more than one percent (1%) nor less than one-quarter percent (1/4%) of the total number of votes cast in the preceding regular city general election for the office which the candidate seeks.

Where a candidate is seeking nomination to the office of city council AT-LARGE member, the candidate's petition shall be signed by a number of voters of the city equal to not more than one percent (1%) nor less than one-fourth (1/4%) of the number resulting when the total number of votes cast at the preceding regular city general election for all offices of the city council members of the city council member is divided by nine (9).

WERE A CANDIDATE IS SEEKING NOMINATION TO THE OFFICE OF CITY COUNCIL DISTRICT MEMBER, THE CANDIDATE'S PETITION SHALL BE SIGNED BY A NUMBER OF VOTERS OF THE DISTRICT EQUAL TO NOT MORE THAN ONE PERCENT (1%) NOR LESS THAN ONE-FOURTH (1/4%) OF THE NUMBER RESULTING WHEN THE TOTAL NUMBER OF VOTES CAST AT THE PRECEDING REGULAR CITY GENERAL ELECTION FOR ALL OFFICES OF THE CITY COUNCIL MEMBERS IS DIVIDED BY NINE (9).

Sec. 4-103. Selection of Council President.

The member of the city council receiving the highest number of at-large votes at the regular city general election shall be president of the city council for the ensuing four (4) year term, and the member of the city council receiving the next highest number of at-large votes at such election shall be president pro tempore of the city council; AND IN THE ABSENCE FOR ANY REASON OF THE PRESIDENT OF CITY COUNCIL OR IN CASE SUCH OFFICE BECOMES VACANT FOR ANY REASON, THE PRESIDENT PRO TEMPORE SHALL BECOME PRESIDENT OF CITY COUNCIL, and in the absence for any reason of the president and president pro tempore of the city council, or in case either of such offices shall become vacant for any reason, the member of the city council who received the next highest number of DISTRICT at large votes at such election to such absentee or to the person who held such vacated office, shall be the president or president pro tempore of the city council, as the circumstances of the case may require.

*** BALLOT SUMMARY ***

The question regarding this proposed charter amendment shall appear on the ballot as follows:

The proposed charter amendment would:

Amend the Detroit City Charter and provide for a total of nine members of City Council with one (1) council member, with district residency, elected from each of seven (7) districts and two (2) members elected at large.

Require that the Detroit Election Commission, within 90 days after certification of the proposal, draw boundary lines of the seven (7) districts for the next scheduled municipal election that are compact, contiguous and of equal population based on the census figures of the most recent United States decennial census.

2009-0027443-A

City of Detroit
DEPARTMENT OF ELECTIONS

DANIEL A. BAXTER, *Director*

JANICE M. WINFREY, *City Clerk*
Chairperson, Election Commission

RACHEL H. JONES, *Deputy Director*

2978 W. Grand Blvd.
Detroit, Michigan 48202-3069

(313) 876-0190 Fax (313) 876-0053

August 19, 2009

Governor Jennifer M. Granholm
P.O. Box 30013
Lansing, Michigan 48909

Re: Detroit Charter Amendment Petition

Dear Governor Granholm,

On Wednesday, August 5, 2009, the Detroiters for City Council by Districts presented to my office an "Initiative Petition to Amend the Detroit City Charter." Act 279 of 1909, Section 117.25 requires that "the petition shall be signed by at least 5% of the qualified and registered electors of a municipality." Upon receipt of the petitions Detroit had 575,867 registered electors. To meet the minimum requirement 28,793 valid signatures were to be submitted. The petition for the Detroit Charter Amendment contained 38,375.

After thoroughly canvassing the petitions the Department of Elections was able to confirm 30,274 valid signatures of qualified and registered electors. The petition meets the minimum requirement of the statute.

Pursuant to Act 297 of 1909, Section 117.22, I am submitting, for your review and approval, a copy of the petition, which contains the language of the proposed charter amendment.

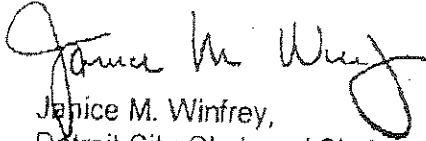
Pursuant to Act 297 of 1909, Section 117.21, a copy of the petition language is being forwarded to the office of the Michigan Attorney General to ensure compliance to the 100-word requirement.

Please be advised that the General Election for which this question will be placed on the ballot is scheduled for Tuesday, November 3, 2009. An expedient process will be greatly appreciated. Names of candidates and ballot questions are to be submitted to the printer not later than Wednesday, August 26, 2009. Therefore I am requesting that you respond not later than Tuesday, August 25, 2009.

NO. 2704 P. 2

If you have any questions regarding this matter, please do not hesitate to contact Daniel Baxter, Director of Elections, at 313 876-0222.

Respectfully,



Janice M. Winfrey,
Detroit City Clerk and Chairperson
Election Commission

Enclosures

Cc: Mike Cox, Michigan Attorney General

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30754
LANSING, MICHIGAN 48909

August 24, 2009

Honorable Jennifer M. Granholm
Governor, State of Michigan
The George Romney Building
Lansing, MI 48909

Attention: Steven C. Liedel
Legal Counsel to the Governor

Dear Governor Granholm:

Re: **City of Detroit – proposed charter amendment by initiative petition**

Section 3-106, Section 3-107, and Section 4-103 – provides, in place of nine at-large council seats, for seven district council seats and two at-large council seats, for the establishment of seven council districts by the City Election Commission, and for rankings based on the number of votes received in one's district election of the seven district council members for automatic selection to fill a vacancy in the offices of Council President and President Pro Tem

You have referred to this office for examination this charter amendment proposed by initiative petition and submitted to you by the Clerk of the City of Detroit on August 20, 2009.

I have examined the proposed amendment in light of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 et seq, and conclude that the amendment is consistent with the HRCA.

The Attorney General has a separate responsibility to review the proposed ballot language for compliance with the requirements of Section 21 of the HRCA which mandate that the ballot language be limited to 100 words and accurately and impartially describe the proposed amendment. As set forth in the initiative petition, the ballot language is incomplete, because the ballot language does not conclude with a question seeking voter approval of the proposed amendment. MCL 168.643a states that the question should be framed so that a "yes" vote will be a vote in favor of the proposal and a "no" vote will be a vote against the proposal.

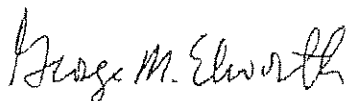
A second problem with the proposed ballot language is the statement that the Detroit Election Commission will be required to establish the boundaries of the City's seven council districts within 90 days "after certification of the proposal." A review of the text of the proposed amendment discloses no such 90 day deadline. Accordingly, it must be concluded that this statement does not accurately describe the proposed amendment. In addition, the earliest date on

Hon. Jennifer M. Granholm
Page 2

which this amendment could take effect if approved by the City voters would be at the beginning of the City's next fiscal year after that election, since the amendment will require city funds to pay for the work of the City Election Commission and its staff in drawing up these seven council districts. Section 25(5) of the HRCA.

When an initiative petition is lacking ballot language, Section 21(2) of the HRCA states that the City Council shall provide the ballot language for the proposed amendment. Instances of ballot language being provided by resolution of a city council for charter amendments proposed by initiative petition include Ann Arbor in 2004, Eastpointe in 2005, and Wyandotte, Grosse Pointe Woods, Hillsdale, and Pottersville in 2006.

Very truly yours,



George M. Elworth
Assistant Attorney General
Finance Division
Tel No: (517) 373-1130
Fax No: (517) 335-3088

Encs.

c w/o enc: Janice M. Winfrey, City Clerk